

Before the
Federal Communications Commission
Washington, DC 20554

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| In the Matter of |) | |
| |) | |
| Request for Waiver by |) | |
| |) | |
| Alpine County Unified School District |) | NEC.471.01-24-00.5400004 |
| Markleeville, California |) | |
| |) | |
| Hopatcong Borough Schools |) | NEC.471.01-24-00.5400170 |
| Hopatcong, New Jersey |) | |
| |) | |
| St. Athanasius School |) | NEC.471.01-20-00.5100053 |
| Jesup, Iowa |) | |
| |) | |
| Federal-State Joint Board on |) | CC Docket No. 96-45 |
| Universal Service |) | |
| |) | |
| Changes to the Board of Directors of the |) | CC Docket No. 97-21✓ |
| National Exchange Carrier Association, Inc. |) | |

ORDER

Adopted: January 11, 2002

Released: January 14, 2002

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration the above-captioned Waiver Requests, seeking a waiver of the Commission's rules governing discounts for services under the schools and libraries universal service support mechanism.¹ Specifically, the above-captioned entities request a waiver of the Funding Year 3 (July 1, 2000-June 30, 2001) application window because they did not submit a completed FCC Form 471 by the filing deadline.² For the reasons set forth below, we direct the above-captioned applicants to provide, within 60 days of the date of this Order, proof, to the extent such exists, that they mailed their FCC Form 471 within the period

¹ See Letter from R. Scott Auble, Alpine County Unified School District, to Federal Communications Commission, filed June 26, 2000 (Alpine Waiver Request); Letter from Timothy J. Frederiks, Hopatcong Borough Schools, to Federal Communications Commission, filed June 2, 2000 (Hopatcong Waiver Request); Letter from Gladys Oppold, St. Athanasius School, to Federal Communications Commission, filed June 29, 2000 (St. Athanasius Waiver Request).

² *Id.*

prescribed in this Order. Upon the timely submission of such proof, the Commission will determine whether such evidence supports the grant of a waiver.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to SLD a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts. The Administrator must post the FCC Form 470 on its website, and the applicant is required to wait 28 days before making a commitment with a selected service provider.⁴ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵ The Commission's rules require that the applicant file a completed FCC Form 471 within a filing window established by the Administrator to be considered pursuant to the funding priorities for "in-window" applicants.⁶ All FCC Forms 471 that are filed within the window are considered as if they had arrived on the same day, and have priority over those received after the closing date of the window.⁷

3. Filings with the Commission that do not involve the schools and libraries universal service support mechanism are typically considered filed on the date that they are received by the Commission, rather than when postmarked by the applicant.⁸ Under SLD's procedures in effect for the first three funding years, applications that were not *received* by SLD by the close of the filing window were deemed to have missed the deadline.⁹ The filing window deadline for Funding Year 3 closed on January 19, 2000.¹⁰ Tens of thousands of applicants have successfully filed their FCC Forms 471 within the filing window.

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. §§ 54.504(b)(3) and (4); § 54.511.

⁵ 47 C.F.R. § 54.504(c).

⁶ 47 C.F.R. §§ 54.504(c); 54.507(c).

⁷ See 47 C.F.R. § 54.507(c).

⁸ See 47 C.F.R. § 1.7.

⁹ See, e.g., SLD website, What's New March 2000 (March 29, 2000) <<http://www.sl.universalservice.org/whatsnew/032000.asp#32900>>.

¹⁰ See SLD website, SLD Announces Availability of New Forms (October 19, 1999) <<http://www.sl.universalservice.org/whatsnew/101999.asp>>.

4. Starting with the application process for Funding Year 4, SLD, in consultation with the Commission, directed that FCC Forms 471 would be considered filed when *postmarked*, not when received.¹¹ The new policy is designed to ensure that applicants are held harmless in the event of a failure of the postal system or courier to deliver the application within a reasonable period of time. SLD's new policy applies only starting in Funding Year 4, and does not apply retroactively to the first three funding years.

5. In *Hardee County*, the Commission recently granted a waiver of its filing window deadline for the schools and libraries support mechanism to a limited number of applicants.¹² Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹³ In its recent order, the Commission directed that applicants with pending Waiver Requests for any of the first three funding years that could demonstrate that they had postmarked their FCC Forms 471 at least three days before the filing window deadline, or that they mailed the forms via guaranteed overnight courier at least one day before the deadline, would be deemed to have filed their FCC Forms 471 within the filing window.¹⁴ The Commission based its determination in large measure upon the fact that, beginning in Funding Year 4, applications are deemed filed when postmarked.

6. In granting the waivers for applications in the first three funding years, the Commission provided fair treatment to applicants that exercised reasonable efforts to comply with then-existing procedures, by not penalizing them for long mail delivery delays. One application, for example, was not received until nine days after being mailed, two days past the deadline.¹⁵

7. After a careful review of the record, we conclude that the above-captioned Waiver Requests may be eligible for relief under our *Hardee County* Order. In each of the above-captioned cases, the record is unclear as to the date and manner of mailing, so we are unable to determine whether these applicants either postmarked their FCC Forms 471 at least three days before the filing window deadline, or mailed the forms via guaranteed overnight courier at least one day before the deadline. We therefore direct the above-captioned applicants to provide the Commission with any documentation demonstrating the date on which they mailed their FCC Forms 471 that are the subject of

¹¹ See Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (October 2000) (Form 471 Instructions).

¹² See *Request for Review by Hardee County School Board et al., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, DA 01-2978 (Com. Car. Bur. rel. December 21, 2001) (*Hardee County*).

¹³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁴ See *Hardee County*.

¹⁵ See *id.* (citing Rosendale Waiver Request).

their Waiver Requests. These applicants will have sixty days from the date of this Order in which to provide the evidence that they mailed their FCC Forms 471 at least three days before the filing window deadline, or via guaranteed overnight courier at least one day before the deadline. Note that any such documentation must be *received* by the Commission within sixty days of this Order, in accordance with Commission practice. Applicants that fail to provide the required proof within the sixty-day period will be denied relief for the above-captioned Waiver Requests. Upon timely receipt of proof, the Commission will determine whether such evidence supports a grant of waiver. Upon the grant of such a waiver, the applications will be remanded to SLD for consideration within the filing window.

8. All submissions of proof shall include, in a prominent location on a cover letter or the equivalent, the words "Proof of Mailing of FCC Form 471, Schools and Libraries Universal Service Support Mechanism (Accounting Policy Division, Common Carrier Bureau)." The cover letters shall also include, at a minimum, the name and location of the applicant.

9. The above-captioned applicants may file the requested proof in one of the following ways:

(1) If filed by facsimile, documents shall be faxed to 202-418-0187. The fax transmission should include a cover sheet listing a contact name, phone number, and, if available, an email address.

(2) Submissions may be made by electronic mail, sent to the following email address: CCBSecretary@fcc.gov. Documents filed by electronic mail may be submitted in Adobe Portable Document Format (PDF), Word, Wordperfect, or any other widely-accepted word processing format. The Commission will automatically reply to all incoming emails to confirm receipt.

(3) Submissions that are hand-delivered or messenger-delivered should be addressed for delivery to 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002 (8 a.m. to 7:00 p.m.).

(4) Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743 (8 a.m. to 5:30 p.m.).

(5) United States Postal Service first-class mail, Express Mail, and Priority Mail should be addressed for delivery to 445 12th St. SW, Washington, DC 20554.

Analysis of Individual Waiver Requests

10. Alpine County Unified School District. Alpine County Unified School District (Alpine) filed its Year 3 FCC Form 471 on January 24, 2000, after the filing window closed on January 19, 2000.¹⁶ Alpine argues that it deserves relief because, after attempting unsuccessfully to file electronically, it mailed its FCC Form 471 after receiving assurances from an SLD representative that its form would be accepted as timely.¹⁷ We decline to grant relief on the basis of incorrect advice from SLD. Commission precedent establishes that where a party has received erroneous advice, the government is not estopped from enforcing its rules in a manner that is inconsistent with the advice provided by the employee, particularly when relief is contrary to a rule.¹⁸ However, in keeping with this Order, Alpine may provide evidence to the Commission that demonstrates that Alpine mailed its application at least three days before the filing window deadline, or via guaranteed overnight courier at least one day before the deadline. Upon its timely submission, the Commission will determine whether the evidence supports a grant of waiver.

11. Hopatcong Borough Schools. Hopatcong Borough Schools (Hopatcong) filed its Funding Year 3 FCC Form 471 on January 24, 2000, after the filing window closed on January 19, 2000.¹⁹ Hopatcong asserts that its records indicate that its "form was sent to [SLD] by priority mail to be received by January 19, 2000."²⁰ Because Hopatcong sent in its typewritten application with a Block 6 certification signed on January 18, 2000, it could not have mailed its FCC Form 471 earlier than January 18, 2000.²¹ Thus, Hopatcong is ineligible for relief under the *Hardee County* Order unless it can demonstrate that it sent its application via guaranteed overnight courier on January 18, 2000. Hopatcong states that it mailed its application by "priority mail to be received by January 19, 2000," which may suggest that it sent the application via overnight courier on January 18, 2000, but "priority mail" as a U.S. postal service means of delivery is not a guaranteed overnight service.²² Therefore, unless Hopatcong can provide evidence that

¹⁶ FCC Form 471, Alpine County Unified School District, filed January 24, 2000. Although Alpine contends in its Waiver Request that it filed its FCC Form 470 on January 20, 2000, the record reflects that it filed the form on January 24, 2000. *Id.*

¹⁷ See Letter from R. Scott Auble, Alpine County Unified School District, to Schools and Libraries Division, Universal Service Administrative Company, filed June 13, 2000.

¹⁸ *In re Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705, 4707-08, para. 22 (1991) (citing *Office of Personnel Management v. Richmond*, 497 U.S. 1046 (1990)).

¹⁹ FCC Form 471, Hopatcong Borough Schools, filed January 24, 2000.

²⁰ Hopatcong Waiver Request.

²¹ *Id.* In Block 6 of the FCC Form 471, applicants are required to make certain certifications, including certification of compliance with state and local procurement laws, and the status of the entity's technology plan. See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

²² Hopatcong Waiver Request.

it sent its application via guaranteed overnight courier on January 18, 2000, it fails to meet the criteria laid out in *Hardee County*. Accordingly, in keeping with this Order, Hopatcong may provide evidence to the Commission demonstrating that, on January 18, 2000, Hopatcong sent its application via an overnight courier. Upon its timely submission, the Commission will determine whether the evidence supports a grant of waiver.

12. St. Athanasius School. St. Athanasius School (St. Athanasius) filed its Year 3 FCC Form 471 on January 20, 2000, one day after the filing window closed.²³ St. Athanasius claims that it signed and mailed its FCC Form 471 on January 14, five days before the filing window closed.²⁴ Although the record reflects that St. Athanasius signed its form on January 14, 2000, St. Athanasius provides no evidence of when it mailed its application. In keeping with this Order, St. Athanasius may provide evidence to substantiate its claim that it mailed its application on January 14, 2000. Upon timely submission, the Commission will determine whether the evidence supports a grant of waiver.

13. Accordingly, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3 and 54.722(a), that the following applicants SHALL SUBMIT, within 60 days of the date of the release of this Order, any such evidence as required by the terms of this Order concerning the date of the filing of their applications: Alpine County Unified School District, Markleeville, California, filed June 26, 2000; Hopatcong Borough Schools, Hopatcong, New Jersey, filed June 2, 2000; St. Athanasius School, Jesup, Iowa, filed June 29, 2000.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau

²³ FCC Form 471, St. Athanasius School, filed January 20, 2000.

²⁴ St. Athanasius Waiver Request.